

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FILE

OFFICE OF  
MANAGING DIRECTOR

January 19, 2006

John Wells King, Esq.  
Garvey Schubert Barer  
Flour Mill Building  
1000 Potomac Street, N.W.  
Fifth Floor  
Washington, D.C. 20007-3501

Re: West Point Broadcasting, Inc.  
Stations KTIC and KWPN-FM  
Fiscal Year 2004 Regulatory Fee  
Fee Control No. 0507228340284004

Dear Mr. King:

This is in response to your request (dated July 19, 2005) filed on behalf of West Point Broadcasting, Inc. (WPB) for a refund of the \$437.50 penalty for late payment of the Fiscal Year (FY) 2004 regulatory fee for Stations KTIC and KWPN-FM, West Point, Nebraska.<sup>1</sup> For the reasons stated herein, we deny your request.

You assert that the penalty is "unwarranted and unfair[.]"<sup>2</sup> You state that WPB, the licensee of Stations KTIC and KWPN-FM, is a wholly-owned subsidiary of Nebraska Rural Radio Association (NRRA), which is exempt from annual regulatory fees in connection with its licensed stations KRVN and KRVN-FM, Lexington, Nebraska.<sup>3</sup> In a separate communication, you state that "[t]he Commission has determined that KRVN and KRVN-FM are exempt from payment of the annual regulatory fee because NRRA is a non-profit association."<sup>4</sup> You claim that because NRRA's stations are exempt from regulatory fees, you believed that WPB's "stations also should be deemed exempt[.]"<sup>5</sup> You state that although you filed a timely request on August 18, 2004 that the Commission grant WPB an exemption from the FY 2004 regulatory fee, the Office of Managing Director "issued a standard deficiency letter [dated August 25, 2004] which

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<sup>1</sup> See Letter from John Wells King, Esq. to Andrew S. Fishel, Managing Director, FCC (July 19, 2005) (*July 19, 2005 Letter*).

<sup>2</sup> See *id.* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> See Letter from John Wells King, Esq. to Andrew S. Fishel, Managing Director, FCC at 2 (Aug. 18, 2004) (*August 18, 2004 Letter*).

<sup>5</sup> *July 19, 2005 Letter* at 1.

took no note of the [request].”<sup>6</sup> You state that after issuing WPB the deficiency letter, the Commission forwarded to WPB an excerpt from *Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Notice of Proposed Rulemaking*, 20 FCC Rcd 3885, 3885 (2005) (2005 NPRM), in which the Commission proposed to clarify its regulatory fee exemption policies to provide that “licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner.” In view of this clarification, you acknowledge your responsibility for payment of the FY 2004 fees, but contend that WPB could “not have known in August 2004 that a regulatory fee is due for a license held by a for-profit subsidiary of an exempt entity” given that the Commission “did not issue that clarification until February 2005, and then, with respect to 2005 annual regulatory fees.”<sup>7</sup>

The Commission’s rules provide that no regulatory fee shall be required for a nonprofit entity.<sup>8</sup> You acknowledge that WPB is a for-profit entity.<sup>9</sup> The rules define a nonprofit entity as “an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. §501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority.”<sup>10</sup> The rules further provide that

[a]ny permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee based upon its status as a nonprofit entity . . . shall file with the . . . Commission . . . written documentation establishing the basis for its exemption within 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director.<sup>11</sup>

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<sup>6</sup> *Id.* at 2.

<sup>7</sup> *July 19, 2005 Letter* at 2.

<sup>8</sup> *See* 47 C.F.R. §1.1162(c).

<sup>9</sup> *July 19, 2005 Letter* at 2.

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. §1.1162 (c)(1); *see also id.* (“Acceptable documentation may include Internal Revenue Service determination letters, state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority.”)

Thus, section 1.1162(c) specifically provides that the *entity* that qualifies as a tax-exempt, nonprofit organization under the law and submits the appropriate supporting documentation is exempt from the Commission's regulatory fees. The rules do not provide an exemption for an entity based upon its status as a subsidiary of such a qualifying tax-exempt, nonprofit organization. In *Assessment and Collection of Regulatory Fees for Fiscal Year 2005, Report and Order and Order on Reconsideration*, 2005 WL 1585408, para. 21 (2005) (*2005 R&O*),<sup>12</sup> the Commission clarified but did not otherwise change its existing fee exemption policies under section 1.1162 by stating that "licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner." We therefore find that WPB should have known at the time the FY 2004 regulatory fees were due (*i.e.*, August 19, 2004) that its status as a wholly-owned for-profit subsidiary of an entity exempt from our regulatory fees (*i.e.*, NRRA) did not provide the basis for an exemption under section 1.1162 and that it was required to pay regulatory fees for Stations KTIC and KWPN-FM.

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that WPB met this obligation for FY 2004. We therefore deny your request for a refund of the penalty for late payment of the FY 2004 regulatory fee.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger  
Chief Financial Officer

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<sup>12</sup> See also *2005 R&O* at para. 16. The *2005 R&O* adopted the proposed clarifications to the fee exemption policies set forth in the *2005 NPRM*.



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GARVEY SCHUBERT BARER

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July 19, 2005

Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
Washington DC 20554

0507228340284004  
WB # 3574  
ORIGINAL

Please reply to JOHN WELLS KING  
jking@gsblaw.com TEL EXT 2520

*202 letter*  
*Ass'n: clara*  
*30 2/21/05*  
*max 7/22*

RECEIVED - FCC

JUL 19 2005

Federal Communication Commission  
Bureau / Office

RE: West Point Broadcasting, Inc.  
2004 Annual Regulatory Fee  
Request for Refund of Penalties

Dear Mr. Fishel:

On behalf of West Point Broadcasting, Inc., and pursuant to Section 1.1167(a) of the Commission's rules, I respectfully request a refund of penalties assessed in connection with its payment of the 2004 annual regulatory fees for its Broadcast Stations KTIC and KWPN-FM at West Point, Nebraska.

The penalties total \$437.50.

Attached is a copy of (1) the licensee's Remittance Advice Bill For Collection showing the annual regulatory fee and the total due, including 25% penalty; (2) the licensee's check; and (3) the transmittal for payment.

The licensee submits that assessment of the penalty is unwarranted and unfair under the circumstances. It has never shirked its responsibility as a Commission licensee, including its responsibility with respect to annual regulatory fees.

The licensee timely filed a request for exemption from annual regulatory fees on August 18, 2004, a copy of which is attached. As explained therein, the licensee is a subsidiary of Nebraska Rural Radio Association (NRRA), which is exempt from annual regulatory fees for its Broadcast Stations KRVN and KRVN-FM in Lexington, Nebraska. The licensee believed that since it is a wholly-owned subsidiary of NRRA, its stations also should be deemed exempt, and an exemption was requested.\*

\* An exemption also was requested for Panhandle Broadcasting, Inc., licensee of Broadcast Stations KNEB and KNEB-FM at Scottsbluff, Nebraska, also a wholly-owned subsidiary of NRRA. That licensee has paid its 2004 annual regulatory fee, and has filed a companion request for refund of penalties.



GARVEY SCHUBERT BARER

Andrew S. Fishel  
Managing Director  
July 19, 2005

Your office acknowledged receipt of the exemption request by letter of August 25, 2004, copy attached. By letter of September 15, 2005, copy attached, your office advised that the exemption request had been forwarded to the Media Bureau for review and determination.

By letter of May 19, 2005, your office issued a standard deficiency letter which took no note of the prior correspondence regarding the licensee's request for exemption, copy attached. The undersigned responded by letter of May 24, 2005, copy attached. An email exchange followed on May 26, 2005, copy attached.

By fax transmitted June 29, 2005, your office forwarded an excerpt from the Commission's Notice of Proposed Rulemaking in MD Docket No. 05-59, FCC 05-35, which states, at ¶ 29, that a regulatory fee is due for a license held by a for-profit subsidiary of an exempt entity. With this clarification, the licensee acknowledges its responsibility for payment of the 2004 annual regulatory fee.

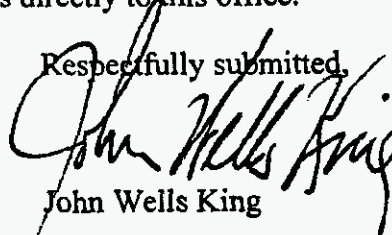
However, as the prior circumstances indicate, the licensee has not been a laggard or a delinquent in addressing its responsibilities. The licensee acknowledged the annual regulatory fee payment deadline and timely filed a request for exemption. It has been immediately responsive to each and every Commission request for information.

More importantly, the licensee could not have known in August 2004, that a regulatory fee is due for a license held by a for-profit subsidiary of an exempt entity. The Commission did not issue that clarification until February 2005, and then, with respect to 2005 annual regulatory fees.

For the foregoing reasons, and in view of the circumstances shown, I respectfully request that the Commission refund the penalties assessed the licensee, and issue a check in the amount of \$437.50.

Kindly communicate any questions directly to this office.

Respectfully submitted,



John Wells King

JWK:yg